

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 RODERICK HYMON,

5 Plaintiff,

6 v.

7 JULIE STEPS, *et al.*,

8 Defendants.
9

Case No. 2:23-cv-01521-JAD-BNW

**ORDER ADOPTING
REPORT AND RECOMMENDATION**

10 **On 5/21/24 the magistrate judge entered this report and recommendation [ECF No. 21]:**

11 On September 26, 2023, Plaintiff filed his complaint against Defendants. ECF No. 1-1.
12 The Court screened Plaintiff's complaint and dismissed his claims with leave to amend. ECF
13 No. 4. Plaintiff objected and appealed the order, which was later affirmed. ECF Nos. 16, 17, and
14 18. In affirming the order, the Court gave Plaintiff until April 26, 2024 to file an amended
15 complaint and warned Plaintiff that failure to do so may result in dismissal of his case. ECF
16 No. 18. This order returned as undeliverable. ECF No. 19. As such, the Court ordered Plaintiff to
17 update his address by April 25, 2024, and that failure to do so may result in a recommendation
18 that his case be dismissed. ECF No. 20. To date, Plaintiff has neither updated his address nor filed
19 an amended complaint. As a result, the Court recommends that this case be dismissed without
20 prejudice and be closed.

21 The law permits a district court to dismiss an action based on a party's failure to comply
22 with a court order. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for
23 failure to comply with an order requiring amendment of complaint). In determining whether to
24 dismiss an action on this ground, the court must consider: (1) the public's interest in expeditious
25 resolution of litigation, (2) the court's need to manage its docket, (3) the risk of prejudice to the
26 defendants, (4) the public policy favoring disposition of cases on their merits, and (5) the
27 availability of less-drastic alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d
28 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir.
1987)).

1 The first two factors, the public's interest in expeditiously resolving this litigation and the
 2 Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's claims. The third
 3 factor, risk of prejudice to Defendants, also weighs in favor of dismissal because a presumption of
 4 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
 5 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
 6 factor—the public policy favoring disposition of cases on their merits— weighs against dismissal.

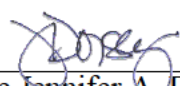
7 The fifth factor requires the Court to consider whether less-drastic alternatives can be used
 8 to correct the party's failure that brought about the Court's need to consider dismissal. Courts
 9 "need not exhaust every sanction short of dismissal before finally dismissing a case, but must
 10 explore possible and meaningful alternatives." *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
 11 Cir. 1986). Because this action cannot proceed without an operative complaint, the only
 12 alternative is to enter a third order setting another deadline. The circumstances here do not
 13 indicate that Plaintiff needs additional time. Therefore, setting another deadline is not a
 14 meaningful alternative, especially given that Plaintiff has not updated his address. So, the fifth
 15 factor favors dismissal.

16 In balance, the factors above favor a recommendation of dismissal. *See Hernandez v. City*
 17 *of El Monte*, 138 F.3d 393 (9th Cir. 1998) (holding that dismissal is proper where at least four
 18 factors support dismissal or where at least three factors "strongly" support dismissal).

19 **IT IS THEREFORE RECOMMENDED** that this action is DISMISSED for failure to
 20 file an amended complaint by the court-ordered deadline, leaving no claims pending.

21 **ORDER**

22 The deadline to object to this recommendation was June 4, 2024, and no party filed
 23 anything or asked to extend the deadline to do so. "[N]o review is required of a magistrate judge's
 24 report and recommendation unless objections are filed." *United States v. Reyna-Tapia*, 328 F.3d
 25 1114, 1121 (9th Cir. 2003). Having reviewed the report and recommendation, I find good cause to
 26 adopt it, and I do. **IT IS THEREFORE ORDERED that the Report and Recommendation**
 27 **[ECF No. 21] is ADOPTED, and THIS CASE IS DISMISSED. The Clerk of Court is**
 28 **directed to ENTER JUDGMENT accordingly and CLOSE THIS CASE.**


 U.S. District Judge Jennifer A. Dorsey 6/5/24